Supreme Court, U.S.
FILED

021509 APR 14 2003

OFFICE OF THE CLERK

No. 02-

IN THE

Supreme Court of the United States

MINISTRY OF FINANCE OF THE REPUBLIC OF INDONESIA,
Petitioner,

v.

KARAHA BODAS COMPANY, L.L.C.,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

SETH P. WAXMAN
JODY MANIER KRIS
JOSEPH R. PROFAIZER
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

CAROLYN B. LAMM
Counsel of Record
FRANK PANOPOULOS
R. SHAWN GUNNARSON
WHITE & CASE LLP
601 Thirteenth Street, N.W.
Washington, D.C. 20005
(202) 626-3600

Counsel for Petitioner

90 pp

QUESTIONS PRESENTED

1. Whether the Second Circuit erred, in conflict with decisions of this Court and other courts of appeals, in refusing to review *de novo* all legal issues timely raised by a foreign state under the Foreign Sovereign Immunities Act of 1976 ("FSIA"), including in particular the contention that revenues restrained by the district court constituted "property * * * of [that] foreign state" under 28 U.S.C. § 1609.

2. Whether the Second Circuit erred, in conflict with the plain language of the FSIA and the settled law of the Fifth Circuit, in failing to decide the threshold statutory question under 28 U.S.C. § 1610(b): whether a right to payment abroad of a fee is "property in the United States."

PARTIES TO THE PROCEEDING

The Ministry of Finance of the Republic of Indonesia participated as a non-party Appellant-Cross-Appellee below. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara was the Respondent-Appellant-Cross-Appellee below. Karaha Bodas Company, L.L.C. was Petitioner-Appellee-Cross-Appellant below.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 2

INTRODUCTION 2

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE PETITION 12

I. THE SECOND CIRCUIT'S CONCLUSION THAT IT NEED NOT CONSIDER THE REPUBLIC'S SOVEREIGN IMMUNITY CLAIMS INTERPRETED A VITAL FEDERAL STATUTE IN A MANNER INCONSISTENT WITH DECISIONS OF THIS COURT AND OTHERS 12

II. THE SECOND CIRCUIT INTERPRETED THE SCOPE OF 28 U.S.C. § 1610(b) IN A MANNER INCONSISTENT WITH THE PLAIN LANGUAGE OF THE STATUTE AND FIFTH CIRCUIT PRECEDENT 18

III. THE QUESTIONS PRESENTED RAISE IMPORTANT ISSUES OF FEDERAL LAW AND IMPLICATE FEDERAL INTERESTS IN COMITY WITH FOREIGN NATIONS 24

CONCLUSION 27

TABLE OF AUTHORITIES

CASES Page(s)

Alejandre v. Republic of Cuba, 42 F. Supp. 2d 1317 (S.D. Fla.), *rev'd on other grounds*, 183 F.3d 1277 (11th Cir. 1999) 23

Alliance Bond Fund, Inc. v. Grupo Mexicano de Desarrollo, S.A., 190 F.3d 16 (2d Cir. 1999) 11

Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428 (1989) 4, 14, 15

Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964) 24

Banks v. Chi. Grain Trimmers Ass'n, 390 U.S. 459 (1968) 1

Christopher v. Harbury, 536 U.S. 403 (2002) 24

City of Englewood v. Socialist People's Libyan Arab Jamahiriya, 773 F.2d 31 (3d Cir. 1985) 16, 20

Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 404 (1821) .. 17

Conn. Bank of Commerce v. Republic of Congo, 309 F.3d 240 (5th Cir. 2002) ..... *passim*

De Letelier v. Republic of Chile, 748 F.2d 790 (2d Cir. 1984) 5

Devlin v. Scardelletti, 536 U.S. 1 (2000) 1

Eckert Int'l, Inc. v. Gov't of the Sovereign Democratic Republic of Fiji, 32 F.3d 77 (4th Cir. 1994) 16

Fid. Partners, Inc. v. First Trust Co. of N.Y., 58 F. Supp. 2d 55 (S.D.N.Y. 1999) 20

Fid. Partners, Inc. v. Philippine Exp. & Foreign Loan Guar. Corp., 921 F. Supp. 1113 (S.D.N.Y. 1996) 23

First Nat'l City Bank v. Banco Para el Comercio de Cuba, 462 U.S. 611 (1983) ("*Bancec*") 18, 26

Forsyth v. City of Hammond, 166 U.S. 506 (1897) 24

Hercaire Int'l, Inc. v. Argentina, 821 F.2d 559 (11th Cir. 1987) 16, 21

In re Tamimi, 176 F.3d 274 (4th Cir. 1999) 16

Kaplan v. Rand, 192 F.3d 60 (2d Cir. 1999) 1

Pere v. Nuovo Pignone, Inc., 150 F.3d 477 (5th Cir. 1998) 16

Phaneuf v. Republic of Indonesia, 106 F.3d 302 (9th Cir. 1997 16

Quackenbush v. Allstate Ins. Co., 517 U.S. 706 (1996) 17

Republic of Argentina v. Weltover, Inc., 504 U.S. 607 (1992) 4, 14

Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468 (9th Cir. 1992) 20

Stena Rederi AB v. Comision de Contratos, 923 F.2d 380 (5th Cir. 1992) 15–16

Stephens v. Nat'l Distillers & Chem. Corp., 69 F.3d 1226 (2d Cir. 1996) 22

Verlinden B.V. v. Cent. Bank of Nigeria, 461 U.S. 488 (1983) .....*passim*

STATUTES AND RULES

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1292(b) 9

Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602–1611 .....*passim*

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, *codified at* 9 U.S.C. §§ 201–208 7

Fed. R. Civ. P. 60(b) 7

Fed. R. Civ. P. 69(a) 11, 18

N.Y. C.P.L.R. § 5201(b) 11, 19

N.Y. C.P.L.R. § 5222(b) 7

OTHER AUTHORITIES

H.R. Rep. 94-1487, at 28 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604 ..... 5, 20, 24, 26

The Ministry of Finance for the Republic of Indonesia ("Ministry") respectfully petitions this Court for a writ of certiorari to review the judgment in this action of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The Second Circuit's opinion (Pet. App. 1a) is reported at 313 F.3d 70. The district court's Final Order (Pet. App. 38a) is unreported. The order of the Second Circuit modifying the district court's stay pending appeal (Pet. App. 45a) is unreported. The Second Circuit's order denying the petition for rehearing (Pet. App. 48a) is unreported.

JURISDICTION

The judgment of the Second Circuit was entered on December 10, 2002. A timely petition for rehearing was denied on January 13, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).[1]

---

[1] Although not a formal party to the underlying dispute, the Ministry is nonetheless entitled to invoke the Court's jurisdiction under 28 U.S.C. § 1254(1). *See Banks v. Chi. Grain Trimmers Ass'n.*, 390 U.S. 459, 461 (1968) (unanimous) (exercising jurisdiction where the petitioner was adversely affected by an appellate decision but did not participate in the case before filing a petition for certiorari); *see also Devlin v. Scardelletti*, 536 U.S. 1, 122 S. Ct. 2005, 2010 (2002) (stating that to determine who may appeal, courts must ascertain whether putative appellants are "bound by the order from which they were seeking to appeal"). The Second Circuit held that the Ministry could appeal the district court's Final Order as a non-party because the Ministry's claim that it owned "the property encompassed by the garnishment order" gave the Ministry "an 'affected interest'" that entitled the Ministry to join the appeal. Pet. App. 15a (quoting *Kaplan v. Rand*, 192 F.3d 60, 67 (2d Cir. 1999)). By submitting this Petition, the Ministry is not waiving its, the Republic's, or the Government of Indonesia's sovereign immunity and reserves all jurisdictional and prudential defenses.

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602–11 (2000), are reproduced at Pet. App. 49a.

INTRODUCTION

This Petition concerns the attachment by federal courts of nearly $285 million in revenues from the sale of liquefied natural gas ("LNG Revenues") belonging to the Republic of Indonesia ("Republic") for the benefit of Indonesia's people. These revenues are used by the Republic, *inter alia*, to maintain critical foreign exchange reserves, pay sovereign debt, and fund its national budget in compliance with the International Monetary Fund's ("IMF") economic recovery program for Indonesia. Respondent Karaha Bodas Co., L.L.C. ("KBC") attached these revenues to satisfy a judgment against the Republic's independent state-owned oil and gas company, Perusahaan Pertambangan Minyak Dan Gas Bumi Negara ("Pertamina"). The Republic argued below that the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602–1611 ("FSIA"), deprived the district court of jurisdiction and authority to attach such revenues because they constitute the Republic's property and, thus, are immune from attachment as "property of a foreign state" under 28 U.S.C. § 1609.

Despite recognizing that the Republic is a "foreign state" under the FSIA, the Second Circuit expressly declined to make an independent determination of the Republic's claim that all the restrained revenues constituted the Republic's "property in the United States." Instead, the Second Circuit held that the Republic's sovereign immunity claims were not "before it." Pet. App. 17a n.12. The basis for its declining to adjudicate the question whether the Republic possessed a "property" interest under the FSIA in all the restrained revenues was its unquestioning acceptance of the

conclusion in the district court's order that a portion of the revenues equal to a "Retention Fee" paid Pertamina in Jakarta was "the property of Pertamina—as opposed to the property of the Ministry or the Republic of Indonesia." *Id.* By declining to review the Republic's claim that the district court erred in concluding the Republic had no property interest in the portion of the revenues equal to the Retention Fee, the Second Circuit acted in derogation of the decisions of this Court and other circuits. Those decisions direct appellate courts to adjudicate *de novo* the district court's resolution of all legal issues decided adversely to the claim of a foreign state that the FSIA precludes attachment of its property.

Having failed to address a threshold issue of sovereign immunity timely raised by the Republic, the Second Circuit then misconstrued the FSIA when it considered Pertamina's claim that sovereign immunity barred attachment of the amount of revenues equal to the Retention Fee. First, the Second Circuit held that a contractual waiver of sovereign immunity by Pertamina applied to *all* of Pertamina's property interests, without considering whether or not those interests, as a threshold matter, existed "in the United States" as required by the FSIA. Second, the Court of Appeals supplanted the FSIA with New York law. Each of these holdings decided a legal issue in conflict with decisions of this Court and other courts of appeals. Had the Second Circuit resolved these two legal issues as the law of this Court and other circuits dictates, the nearly $285 million at issue in this case would have been released to the Republic's account in Indonesia's central bank for use in discharging the Republic's public functions.

The Second Circuit's decision gravely threatens the statutory scheme designed by Congress to protect foreign sovereign immunity in state and federal courts. It presents a pernicious blueprint for other courts to deny foreign states the immunity their property is accorded

under federal law, thereby interfering with U.S. foreign relations. The decision will almost certainly impair the relationship between U.S. money-center banks and foreign states and instrumentalities. This Court should grant certiorari to resolve the conflicts engendered by the Second Circuit's decision and to preserve the delicate balance between immunity and amenability to attachment and execution reflected in the FSIA.

STATEMENT OF THE CASE

Statutory Background. The FSIA prescribes "a comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies or instrumentalities." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 488 (1983); *accord Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 610 (1992); *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 435 n.3 (1989). Under the FSIA, a federal court must satisfy itself at the "threshold of every action" against a foreign state whether an exception to sovereign immunity specified in the statute permits the exercise of federal jurisdiction. *Verlinden*, 461 U.S. at 493–94; *see also Amerada Hess*, 488 U.S. at 434–35. Indeed, even if the foreign state does not enter an appearance, a court still must determine that immunity is unavailable under the FSIA. *Verlinden*, 461 U.S. at 494 n.20.

The FSIA's standards specifically include immunity from compulsory restraint on property:

> Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

28 U.S.C. § 1609.

Section 1610 sets forth the limited exceptions to the broad immunity conferred in section 1609. Section 1610(a) provides seven specific exceptions to immunity from execution and attachment in aid of execution for the property of a foreign state (including its agencies and instrumentalities), but only if the property meets two threshold criteria: it must be "property in the United States" that is "used for commercial activity in the United States." *Id.* at § 1610(a). Section 1610(b) extends the threshold criteria under section 1610(a) to include also "any property in the United States" of an agency or instrumentality of a foreign state "engaged in commercial activity in the United States." *Id.* at § 1610(b).

By codifying immunity from attachment as the general rule, Congress largely followed the pre-FSIA principle that "the property of foreign states is absolutely immune from execution." H.R. Rep. No. 94-1487, at 27 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604, 6626 ("1976 U.S.C.C.A.N."). Against this historical backdrop of sweeping immunity, Congress chose deliberately only to "partially lower the barrier of immunity from execution," as "the enforcement of judgments against foreign state property remains a somewhat controversial subject in international law." *Id.*; *see generally De Letelier v. Republic of Chile*, 748 F.2d 790, 798–99 (2d Cir. 1984) (discussing the narrow scope of attachment and execution under 28 U.S.C. §§ 1609–1611).

The Republic's LNG Revenues and the Retention Fee. The Indonesian Constitution and laws creating Pertamina embody the principle that the sovereign owns all natural resources and the revenues generated by development of those resources "for the greatest possible prosperity of the people." Pet. App. 26a (quoting Elucidation of Art. 33 of the 1945 Constitution of the Republic of Indonesia). To fulfill this constitutional mandate, the Republic authorizes Pertamina to enter into Production Sharing Contracts ("PSCs") with oil and

natural gas contractors licensed to extract and develop Indonesia's oil and natural gas resources in cooperation with Pertamina. Pet. App. 8a. Each PSC contains a choice-of-law provision designating that Indonesian law governs the contract. *Id.* at 7a–8a.

Buyers of Indonesian LNG remit payments to trust accounts in New York. *Id.* at 8a. After the trustee services debt and deducts other specified charges and fees, the LNG Revenues are shared between the PSC Contractors who developed the gas and Pertamina according to the terms of the PSCs. *Id.* at 9a. The trustee allocates the respective shares to sub-accounts maintained in the contractors' and Pertamina's names. *Id.* at 9a–10a. Because Pertamina takes its share under the PSC on behalf of the Republic, it has instructed the trustee, as mandated by Indonesian law, to distribute the entirety of Pertamina's nominal share directly to Bank Indonesia's (Indonesia's central bank) foreign exchange reserve account at the New York Federal Reserve Bank. *Id.* at 2a–3a, 10a, 35a & n.19. The LNG Revenues are used by the Republic to fund a substantial portion of the national budget, maintain Indonesia's foreign exchange reserves, and service Indonesia's foreign debt. *Id.* at 10a; *see* Part III, *infra*.

In exchange for the services Pertamina provides, it thereafter receives a Retention Fee from the Republic in Jakarta, Indonesia. Pet. App. 19a–20a, 36a. By regulation, this fee amounts to "'5% (five percent) of the Net Operating Income of the relevant Production Sharing Contract.'" *Id.* at 19a (quoting Government Regulation of the Republic of Indonesia No. 41 of 1982, Art. 5(1)). Article 5(2) of the same regulation also provides that the difference between the amount allocated to Pertamina under each PSC and the Retention Fee "'shall be the Government's portion.'" *Id.* The Republic pays the Retention Fee to Pertamina only after the share of LNG Revenues nominally allocated to Pertamina is credited to

the Republic's treasury account at Bank Indonesia in Jakarta. *See id.* at 20a & n.13.

KBC's Attachment of The LNG Revenues. In December 2000, KBC obtained an arbitral award in the amount of $261.1 million plus interest against Pertamina for breach of a geothermal development project contract unrelated to the PSC contracts.[2] *Id.* at 5a. In December 2001, the United States District Court for the Southern District of Texas confirmed that arbitral award and entered a final judgment in the amount of the award plus interest ("Texas Judgment"). *Id.* at 6a. KBC registered the Texas Judgment in the United States District Court for the Southern District of New York and that court issued an *ex parte* Writ of Execution and Order to Show Cause. *Id.* at 7a. KBC immediately served Restraining Notices pursuant to N.Y. C.P.L.R. § 5222(b) on banks that held trust accounts containing Indonesian oil and natural gas revenues, including LNG Revenues. *Id.* The trustees began restraining all oil and gas revenues allocated to the sub-accounts in Pertamina's name.[3]

---

[2] The arbitration panel dismissed the Republic as a party to that arbitration. Pet. App. 5a.

[3] At the same time KBC was taking steps to attach funds in execution of the judgment, Pertamina appealed the Texas Judgment to the Fifth Circuit. While that appeal was pending, KBC's arbitral award was annulled under Indonesian law by the Central Jakarta District Court. In the context of this case, that court is a jurisdiction recognized under Article V(1)(e) the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §§ 201–208 (2000), with competence to do so. As a result of that annulment and other new information undermining the arbitral judgment, Pertamina filed a motion in the Southern District of Texas to vacate the underlying judgment under Rule 60(b) of the Federal Rules of Civil Procedure. The Fifth Circuit, on March 5, 2003, suspended the appeal of the Texas Judgment for 60 days and remanded the case for the limited purpose of allowing the district court to decide Pertamina's Rule 60(b) Motion. Pertamina also filed a motion in the Southern District of New York to stay all further

(continued...)

The Republic's Claim of Immunity. The Republic, appearing as a non-party with interest, challenged the district court's jurisdiction and authority under the FSIA to restrain the LNG Revenues contained in the sub-accounts in Pertamina's name. *See id.* at 11a. It argued that all funds held nominally by Pertamina in the trust accounts were the Republic's property because Indonesian law establishes that Pertamina holds all such revenues in custody for the Republic, as the owner of all value derived from its natural resources. *See* Republic Br. at 9–17, 26–36, 48–53; Republic Reply Br. at 1, 3–5. It argued further that Pertamina's *only* right to remuneration with respect to the PSCs was its right to receive a Retention Fee, which right accrued under Indonesian law in Jakarta after the Republic had received the share of LNG Revenues nominally allocated to Pertamina in its central bank's account in Jakarta. *See* Republic Br. at 18, 36–41; Republic Reply Br. at 5, 9, 23–25. As such, the Republic claimed that all of the restrained revenues in New York, including the portion equal to the Retention Fee, belonged to the Republic and were immune from attachment under 28 U.S.C. § 1609.

The District Court's Final Order. The district court entered a Final Order on April 26, 2002 that determined ownership of the LNG Revenues in fifteen trust accounts. Pet. App. 42a.[4] The district court determined that ownership of the LNG Revenues was a

---

(...continued)

enforcement proceedings pending the outcome of the appeal before the Fifth Circuit. The Ministry has joined in that motion. Briefing of that motion has not been completed.

[4] The district court did not decide KBC's right of attachment with respect to nine other trust accounts because they entailed varying facts. Pet App. 43a. Those claims remain pending before the district court.

matter of Indonesian law, and that under Indonesian law Pertamina had a property right in the restrained funds to the extent of the Retention Fee, while the remaining funds were owned by the Republic. *Id.* at 11a. The district court therefore concluded that KBC could execute only upon the portion of the restrained revenues equal to the Retention Fee and that the remaining revenues could not be executed upon. *Id.* at 12a, 42a. The court certified the case for appeal under 28 U.S.C. § 1292(b) and stayed its judgment "pending the conclusion of proceedings in the Court of Appeals." *Id.* at 43a–44a.

Proceedings in the Second Circuit. In an interim order dated June 18, 2002, the Second Circuit permitted the Republic and Pertamina to appeal under section 1292(b) or the collateral order doctrine, or both, while reserving judgment on the jurisdictional issues. *Id.* at 46a. That same order modified the district court's stay "to apply only to sufficient funds to satisfy the judgment." *Id.* at 46a. As of that date, the amount sufficient to satisfy KBC's judgment with interest was $276 million—a figure that has continued to grow as a result of the 4% annual post-judgment interest.[5]

Ultimately, the Second Circuit permitted the appeal under section 1292(b), based in part on the fact that "the interaction of federal, New York, and Indonesian law poses 'substantial ground for difference of opinion.'" *Id.* at 14a. Although the court of appeals held that "the Republic * * * is a 'foreign state' within the meaning of the FSIA," *id.* at 2a, its evaluation of the Republic's FSIA claim stopped there; instead of addressing whether, as

---

[5] By June 18, 2002, the overall amount of funds KBC attached had grown to approximately $547 million, of which $503 million was contained in the fifteen trust accounts subject to the appeal. Because that amount exceeded KBC's judgment, the trustee released the excess, thus leaving the amount of KBC's judgment.

the Republic claimed, the *entire* amount of the LNG Revenues nominally allocated to Pertamina constituted "property in the United States of a foreign state [i.e., the Republic]" under 28 U.S.C. § 1609 that did not meet any of the immunity exceptions in 28 U.S.C. § 1610(a), and that the Retention Fee payable to Pertamina was not "property in the United States," it held:

> Because this is an appeal from an order executing a judgment against the property of Pertamina—as opposed to the property of the Ministry or the Republic of Indonesia—the sovereign immunity claims of the Ministry or the Republic of Indonesia are not before us.

Id. at 17a n.12. As a result, the Second Circuit *never addressed the Republic's arguments* demonstrating that the district court's decision with respect to the Republic's ownership of *all* LNG Revenues in the trust accounts—including any in the amount of the Retention Fee—was in error. Instead, it went on to address KBC's cross-appeal and Pertamina's appeal.

With respect to KBC's cross-appeal, the Second Circuit rejected the claim that Pertamina owned all of the restrained LNG Revenues because, even though they were located in trust accounts bearing Pertamina's name, Pertamina held those revenues "in the manner of a trustee" for the Republic. *Id.* at 24a, 36a. It based this conclusion on a judgment that the definition of the "Government's portion" of revenues contained in Article 5(2) of Government Regulation No. 41 of 1982 established that Pertamina has no interest as an owner in those funds but only in the Retention Fee. *Id.* at 33a–36a.

Pertamina argued that Indonesian law established that Pertamina did not own or control any portion of the LNG Revenues, and whatever "future interest" Pertamina may have had to a Retention Fee had not yet accrued and was payable from an entirely separate bank

account in Indonesia. *Id.* at 19a–20a, 36a. Therefore, Pertamina's interest in the Retention Fee was not "property in the United States" under section 1610(b), and thus could not be attached from the LNG Revenues. Pertamina Br. at 33–36. The Second Circuit rejected these claims based on a series of errors stemming from its misapprehension of the FSIA.

Noting first that the exception to immunity contained in section 1610(b) "applies to *all* property of the agencies and instrumentalities of foreign states," Pet. App. 17a, the Second Circuit concluded that because Pertamina had engaged in commercial activity in New York and had waived its immunity from attachment in United States courts, Pertamina was "not protected by sovereign immunity." *Id.* Nowhere did the Second Circuit ascertain whether a threshold requirement was met under section 1610(b) for attachment of Pertamina's property interest: that it be "property in the United States."

Compounding its error, the Second Circuit looked first to 28 U.S.C. § 1606, and then to Federal Rule of Civil Procedure 69(a), leading it to apply "New York law to determine what assets are 'subject to enforcement, and thus available to judgment creditors.'" *Id.* at 18a (quoting *Alliance Bond Fund, Inc. v. Grupo Mexicano De Desarollo, S.A.*, 190 F.3d 16, 20 (2d Cir. 1999)). The court interpreted New York law as providing that money judgments may be enforced against any property "'consist[ing] of a present *or future* right or interest * * * whether or not it is vested.'" *Id.* (quoting N.Y. C.P.L.R. § 5201(b)) (emphasis added). Although the Second Circuit noted the "uncontroverted evidence" that all LNG Revenues held in Pertamina's name are transferred entirely and directly to the Republic's account at Bank Indonesia, *id.* at 35a, and that Pertamina is paid its fee "only after" the revenues reach Jakarta, *id.* at 20a, it nonetheless held that Pertamina "had an interest" in the

LNG Revenues in an amount equal to its Retention Fee that could be attached under New York law, because Pertamina could assert future "control" over the Retention Fee after the revenues were transferred to Jakarta. *Id.* at 36a–37a. In choosing to rely on New York law, which allows for attachment of future property interests, the Second Circuit found it unnecessary to resolve the broader claim that the Ministry presently controlled all the revenues.

The Second Circuit accordingly affirmed the district court's decision. *Id.* It instructed the district court to continue the stay in effect or substitute a similar stay until a final determination is made of the parties' rights to the disputed funds. *Id.* at 37a. Proceedings are underway in the district court to release the Government's revenues.

REASONS FOR GRANTING THE PETITION

I. THE SECOND CIRCUIT'S CONCLUSION THAT IT NEED NOT CONSIDER THE REPUBLIC'S SOVEREIGN IMMUNITY CLAIMS INTERPRETED A VITAL FEDERAL STATUTE IN A MANNER INCONSISTENT WITH DECISIONS OF THIS COURT AND OTHERS.

The Second Circuit erroneously eschewed its obligation to adjudicate the Republic's claim of sovereign immunity, relying instead on the district court's conclusion that Pertamina owned an amount deposited in the trust accounts equal to the Retention Fee. *Id.* at 17a n.12 (because the district court order executed a judgment "against the property of Pertamina * * * the sovereign immunity claims of the * * * Republic are not

before us").[6] The Second Circuit expressly declined to make an independent determination under 28 U.S.C. § 1609 of the argument pressed by the Republic that Indonesia owned *all* the LNG Revenues held in Pertamina's name in the United States and, consequently, that the district court had no jurisdiction or authority under the FSIA to attach such "property * * * of a foreign state" on the basis of Pertamina's future interest to the Retention Fee in Jakarta. The court's separate determination that *Pertamina* had a cognizable property right in a Retention Fee that could be exercised in the future once the LNG Revenues are transferred to Jakarta, Pet. App. 36a, failed to resolve the independent question posed by the *Republic's* appeal that the Republic had a present ownership interest in all of the restrained revenues in New York which, at a minimum, coexisted

---

[6] The Second Circuit acknowledged that the decisive (and indeed the *only*) factor informing the district court's decision in that regard was its interpretation of a single Indonesian regulation, Article 5(2) of Government Regulation 41 of 1982. Pet. App. 11a. Yet, by holding that the Republic's sovereign immunity claims were not before it, the Second Circuit disregarded the other constitutional, statutory, and regulatory provisions of Indonesian law identified by the Republic as relevant to the question that would, if considered *de novo*, produce a judgment different than that reached by the district court. *See generally* Republic Br. at 9–17, Republic Reply Br. at 3–5 & App. A (citing 1945 Constitution of the Republic of Indonesia, Art. 33 ¶ 3) (stating that "natural riches" in Indonesia "shall be controlled by the State" and exploited for benefit "of the people"); Government Regulation No. 27 of 1968, Art. 5 (Pertamina's purpose is to "generat[e] profit * * * for the state."); Law No. 8 of 1971, Art. 5 (Pertamina's objective is to carry out natural gas exploitation "for the maximum prosperity of the People and the State"); Presidential Instruction No. 12 of 1975 (requiring all State income from sale of oil and gas generated by Pertamina be "paid directly to [the] Government's account at Bank Indonesia"); Ministry of Finance Implementing Directive to Bank Indonesia dated March 28, 1984 (instructing Bank Indonesia to pay Retention Fee to Pertamina from treasury account in Jakarta).

with the right of future control that the court found to exist in Pertamina. *Id.* at 36a–37a.

The Second Circuit's unquestioning reliance on the district court's resolution of the antecedent legal issue, whether the Republic had any property right at all in the amount of restrained revenues equal to the Retention Fee, cannot be squared with decisions of this Court and other circuits. Those decisions hold that (1) a foreign state's invocation of sovereign immunity under the FSIA raises threshold legal issues of federal court authority that must be resolved prior to adjudicating on the merits any claim against that State or its property, and (2) appellate courts must review *de novo* all legal questions embedded within a decision of a district court to exercise authority over property that a foreign state claims is protected by sovereign immunity.

1. Twenty years ago this Court first surveyed the history and purposes of the FSIA in the context of a foreign state's claim of immunity from suit pursuant to section 1604. *Verlinden*, 461 U.S. at 486–89. *Verlinden* established the principle that courts have no power to proceed with an action against a foreign state claiming immunity unless and until the court determines that a specific exception stated in the FSIA vitiates that immunity. *Id.* at 493–94. Since then, the Court has repeatedly reiterated this understanding, characterizing the statute as "a *comprehensive* statutory scheme," *Amerada Hess*, 488 U.S. at 435 n.3 (emphasis added), and as "a *comprehensive* framework for determining whether a court in this country, state or federal, may exercise jurisdiction over a foreign state." *Weltover*, 504 U.S. at 610; *see also Verlinden*, 461 U.S. at 488 (declaring the FSIA to be "a *comprehensive* set of legal standards") (emphasis added).

For instance, in *Amerada Hess*, the Court addressed and affirmed Argentina's claim of sovereign immunity in the context of a suit brought by two Liberian corporations

for the destruction by the Argentine military of an oil tanker on the high seas. 488 U.S. at 431–33. Chief Justice Rehnquist, writing for the Court, explained that "the text and structure of the FSIA demonstrate Congress' intention that the FSIA be the *sole basis* for obtaining jurisdiction over a foreign state in our courts." *Id.* at 434 (emphasis added). The Court reiterated its previous command in *Verlinden* that "the FSIA 'must be applied by the district courts *in every action against a foreign sovereign*, since subject matter jurisdiction depends on the existence of one of the specified exceptions to foreign sovereign immunity.'" *Id.* at 434-35 (emphasis added) (quoting *Verlinden*, 461 U.S. at 493). Observing the court of appeals' failure to determine whether any of the FSIA exceptions applied to the case, *id.* at 439 n.6, the Supreme Court undertook to review *de novo* the question whether any asserted exception applied. *Id.* at 439–43. It concluded that because "none of the enumerated exceptions to the Act apply to the facts of this case," there was no basis to exercise jurisdiction over Argentina. *Id.* at 443.

2. A federal court's obligation to make a threshold determination of the applicability of the FSIA to all claims against a foreign sovereign applies equally to actions seeking attachment or execution of property in which a foreign state claims an interest. In *Amerada Hess*, the Court expressly referred to the attachment and execution provisions in 28 U.S.C. §§ 1609–1611 in determining that the statute as a whole comprises a comprehensive statutory scheme through which all claims invoked against foreign sovereigns or their property must pass. *Id.* at 435 n.3. Following that principle, various courts of appeals have held that a court has no authority to authorize attachment of property over which a foreign state claims immunity unless authorized by a specific exception contained in the FSIA. *See, e.g.*, *Stena Rederi AB v. Comision de Contratos*, 923 F.2d 380,

392 n.18 (5th Cir. 1992); *Hercaire Int'l, Inc. v. Argentina*, 821 F.2d 559, 564 (11th Cir. 1987); *City of Englewood v. Socialist People's Libyan Arab Jamahiriya*, 773 F.2d 31, 36 (3d Cir. 1985); *see also In re Tamimi*, 176 F.3d 274, 280 (4th Cir. 1999) (dissolving writ of garnishment because of no exception to immunity under 28 U.S.C. § 1605).

3. Several federal courts of appeals have applied the directive in the foregoing cases to ensure not only that federal courts adjudicate threshold claims of immunity asserted by foreign states exclusively under the FSIA, but also that appellate courts conduct meaningful *de novo* review of *all* legal determinations regarding the FSIA. *See, e.g.*, *Pere v. Nuovo Pignone, Inc.*, 150 F.3d 477, 480 (5th Cir. 1998) ("We review a district court's application of the FSIA *de novo*," including question whether defendant was a foreign state); *Phaneuf v. Republic of Indonesia*, 106 F.3d 302, 304–05 (9th Cir. 1997) (reviewing *de novo* district court's finding that jurisdiction exists under the FSIA's commercial activity exception); *Eckert Int'l, Inc. v. Gov't of the Sovereign Democratic Republic of Fiji*, 32 F.3d 77, 79 (4th Cir. 1994) (reviewing district court's finding that defendant waived immunity under section 1605 *de novo*). Although the Second Circuit recognized and applied a *de novo* standard of review to the legal issues raised by KBC and Pertamina, Pet. App. 12a–13a, it disclaimed application of *any* standard of review with respect to the Republic's FSIA claims. *Id.* at 17a n.12.

4. The Second Circuit's decision in this case applied a wholly different legal standard than that articulated in the foregoing decisions to the central legal issues presented by the Republic for decision on appeal. In effect, the Second Circuit established a rule under the FSIA in which the courts of appeals are excused from adjudicating a foreign state's immunity claims regarding property the foreign state claims it owns (i.e., when the

district court holds that an entity other than the foreign state has an interest in that property). But this new rule cannot co-exist with the foregoing precedents, which broach no exception to the principle that legal determinations of foreign sovereign immunity—determinations that go to the heart of a district court's authority to act against a foreign state—are entitled to *de novo* appellate review. Moreover, the Second Circuit's new rule violates the deeply rooted principle that "federal courts have a *strict duty* to exercise the jurisdiction that is conferred upon them by Congress." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) (emphasis added) (citations omitted); *see also Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (Marshall, J.) (holding that federal courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.").

Unless corrected, the Second Circuit's ruling will impair the ability of foreign states to obtain appropriate appellate review of adverse decisions by district courts on the applicability of the FSIA in the first instance to the attachment of property in which the foreign state claims an interest. More fundamentally, the failure to consider affording immunity to sovereign property will have a chilling effect on foreign states' willingness to place their property in the United States. The Second Circuit's decision is particularly intolerable coming, as it does, from a jurisdiction that attracts a disproportionate number of claims against foreign sovereigns due to its covering the Nation's international business and banking centers. Indeed, most countries' oil and gas revenues generated from dollar-based contracts pass through New York.

II. THE SECOND CIRCUIT INTERPRETED THE SCOPE OF 28 U.S.C. § 1610(b) IN A MANNER INCONSISTENT WITH THE PLAIN LANGUAGE OF THE STATUTE AND FIFTH CIRCUIT PRECEDENT.

The Second Circuit not only failed to address the Ministry's FSIA defense, but it also proceeded to resolve Pertamina's FSIA arguments in a manner pointedly inconsistent with the plain language of section 1610(b) and the decisions of the Fifth Circuit.

1. The Second Circuit's error began when it held that Pertamina was "not protected by sovereign immunity" because (1) section 1610(b) "applies to *all* property of the agencies and instrumentalities of foreign states," and (2) Pertamina had engaged in commerce in the United States and expressly waived any claim to sovereign immunity by contractual agreement with KBC. Pet. App. 17a. Its holding excluded the threshold requirement under section 1610(b): that the property must be "in the United States."

The Second Circuit compounded its error by resorting to New York law (purportedly in compliance with 28 U.S.C. § 1606 and Rule 69(a)), to determine whether Pertamina's *future* interest in the Retention Fee could be attached via LNG Revenues over which the Republic claimed an exclusive present interest.[7] Relying on New

---

[7] Relying on 28 U.S.C. § 1606 was yet another error on the part of the court of appeals. By its express terms, that section deals only with liability from suit under 28 U.S.C. §§ 1605–1607. Determining the threshold requirements for attachment of a sovereign's property is a question of the amenability of the property to attachment that requires a uniform federal rule of decision. *See First Nat'l City Bank v. Banco Para el Comercio de Cuba*, 462 U.S. 611, 622 n.10 (1983) ("*Bancec*") (noting that "[w]hen it enacted the FSIA, Congress expressly acknowledged the importance of developing a uniform body of law concerning the amenability of a foreign sovereign to suit in United States courts") (quotation omitted). Such a determination is

(continued...)

York law (and not the FSIA), the court of appeals then concluded that "*any property* which could be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested" could be attached. Pet. App. 18a (quoting N.Y. C.P.L.R. § 5201(b) (McKinney 2002) (emphasis added)). The Second Circuit cited no authority (nor could it) for the proposition that "property in the United States of a foreign state" within the meaning of 28 U.S.C. § 1610(b) includes the unvested, contingent, future interest in the collection of a fee abroad.[8]

In other words, by disregarding the requirement under section 1610(b) that only property "in the United States" can be attached and by instead defining the scope of attachable property under section 1610(b) according to New York law, the court below read out of the FSIA a threshold condition that narrowly constrains the range of property interests amenable to attachment and execution

---

(...continued)

not one of liability under 28 U.S.C. § 1606, which allows for non-uniform treatment of foreign sovereigns under state law. *Id.* (noting that where state law provides a rule of liability governing private individuals, then under 28 U.S.C. § 1606 the rule must be applied to foreign states in like circumstances).

[8] The opinion below confirms that the Second Circuit believed section 1610(b) conferred authority to attach Pertamina's intangible property interests that are located outside the United States. Not only did the court of appeals expressly declare that section 1610(b) applies to "*all* property" of Pertamina, but the Court also clearly acknowledged that (1) Pertamina's right to the Retention Fee is established by Indonesian law, Pet App. 27a–28a; (2) Pertamina's share of LNG Revenues, in its entirety, is transferred directly to the Republic's account at the Federal Reserve Bank of New York, *id.* at 35a; and (3) Pertamina receives the Retention Fee "only after the revenue reaches Jakarta." *Id.* at 20a & n.19. The record is undisputed that the Retention Fee is ultimately paid to Pertamina out of an account at Bank of Indonesia in Jakarta. R-77E.

under the statute. Had the Second Circuit interpreted section 1610(b) correctly, it would have held based on undisputed, record evidence that any property interest Pertamina possessed in the restrained funds by virtue of the Retention Fee was immune from attachment because it is not "in the United States."

2. The Second Circuit's holding—which ignores the threshold requirement under section 1610(b) that the property be "in the United States"—also contradicts decisions from other circuits (and its own district court). Those decisions uniformly hold that if property lies outside the United States, it remains absolutely immune from attachment and execution. *See, e.g., Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1477 (9th Cir. 1992); *Fid. Partners, Inc. v. First Trust Co. of N.Y.*, 58 F. Supp. 2d 55, 61 (S.D.N.Y. 1999). Given this background rule of absolute immunity from attachment for *all* assets of a foreign state located outside the United States, a federal court may not execute upon any assets of a foreign state before specifically resolving the issue whether those assets are, in fact, located in this country.[9]

---

[9] The Second Circuit's decision to apply New York law to the question of attachment, rather than looking to the express restraints on attachment and execution found in section 1610, also conflicts with the decisions of this Court and the Third, Fifth, and Eleventh Circuits. Those courts have recognized that the FSIA, not New York law or any other legal authority, supplies the comprehensive set of legal standards for adjudicating suits against foreign states, including the exclusive basis for lawfully restraining the property of a foreign state. *See City of Englewood*, 773 F.2d at 35 (prohibiting execution on a sovereign's property under a state tax lien and noting that the FSIA "'is intended to preempt any other State or Federal law * * * for according immunity to foreign sovereigns'") (quoting 1976 U.S.C.C.A.N. at 6610); *Conn. Bank of Commerce v. Republic of Congo*, 309 F.3d 240, 250, 261 (5th Cir. 2002) (holding that a sovereign's property could be restrained only if the FSIA conferred such authority and remanding the case to the district court to determine whether the two threshold requirements of immunity under section 1610(a)

(continued...)

For example, in *Connecticut Bank*, the Fifth Circuit squarely rejected the interpretation advanced by the Second Circuit below in a case presenting an attachment order very similar to this one. There, the Fifth Circuit collaterally reviewed (and rejected) an attachment order that had been issued by a state court in New York against assets of the Republic of Congo. The state court, following a default judgment against the Congo, had issued an order of attachment that gave permission to the plaintiff to execute on Congo's property "wherever it may be found," and did not purport to limit its permission to "property within New York or elsewhere." 309 F.3d at 247. The plaintiff registered its judgment and attempted to garnish royalties held by third-party oil companies but owed to the sovereign. The district court dissolved the garnishment, and the Fifth Circuit remanded the case with instructions to the district court to resolve questions of disputed fact. *Id.* at 260–61.

In framing the standard to be applied on remand, the Fifth Circuit rejected the terms of the New York attachment order and, quoting the express language of section 1610, held that *no* property of a foreign state could be attached unless *all* prerequisites to the applicable FSIA exception were met. *Id.* at 254, 260–61. The court of appeals specifically noted that "[e]ven when a foreign state completely waives its immunity from execution, courts in the U.S. may execute only against property that meets[ ] two statutory criteria." *Id.* at 247. In the case of 1610(a), those two criteria require a

---

(...continued)

applied); *Hercaire Int'l*, 821 F.2d at 563 ("[T]he FSIA provides the *exclusive basis* for federal court jurisdiction in civil actions against foreign states, their agencies and instrumentalities, *and the circumstances under which judgments rendered against foreign states can be executed.*") (emphasis added).

challenger of a foreign state's claim of immunity to show the attached property is "in the United States" and that it is "used for a commercial activity in the United States." *Id.* Section 1610(b) shares the first of those two criteria—that the property be located "in the United States."

In contrast, the Second Circuit held here that because Pertamina had engaged in U.S. commerce and waived its immunity by contract, *none* of Pertamina's property was "protected by sovereign immunity." Pet. App. 17a. The court disregarded the "in the United States" prong required by section 1610(b)[10] and determined that the right to the Retention Fee could be attached under New York law, permitting attachment of unvested, intangible future interests, despite the fact that the right to that intangible property interest (1) was created in a foreign country under auspices of foreign law, (2) accrued in a foreign country, and (3) was payable once accrued out of entirely separate funds located in a foreign country. *Id.* at 19a, 36a–37a. Had KBC levied on a trust account in the Fifth Circuit, the Republic of Indonesia would have been entitled to adjudication of the issue whether Pertamina's future right to collect the Retention Fee was "property in the United States." The Second Circuit's overly permissive interpretation of section 1610(b) incorrectly elided that determination.

Although the situs of *physical* property is often clearly "in the United States" and may not give rise to a disputed issue in that regard, proof of this threshold criterion for

---

[10] Of course, a waiver of immunity from suit or attachment does not waive the threshold requirements for liability or attachment under the FSIA. *See Conn. Bank*, 309 F.3d at 247; *see also Stephens v. Nat'l Distillers & Chem. Corp.*, 69 F.3d 1226, 1230 (2d Cir. 1996) (holding that the FSIA's attachment provisions must be construed narrowly because the FSIA forbids any attachment or execution except as specified in the statute).

intangible property is particularly important because the situs of the property interest may be less clear. The situs of intangible property may well be disputed in a variety of circumstances in international commerce and relations; for example, where funds are held in banks with branches in different countries, *Fidelity Partners, Inc., supra*, or where (as here and in *Connecticut Bank*) there is a contractual right to future fees or dividends that is paid outside the United States but calculated based on revenues held in the United States.

Applying the correct standard under section 1610(b) is essential to preserve the immunity rights of foreign states in *all* cases in which a litigant claims that statutory exceptions apply. Here, resolution of the situs of the property interest is outcome determinative, as the undisputed record establishes that Pertamina's interest in payment of the Retention Fee lies outside the United States. Because the lower courts have also adopted varying standards as to how to approach the question of determining situs in intangible property,[11] the Court can, and should, exercise its supervisory authority to articulate a uniform standard and to determine whether the property interest in the Retention Fee—the only stated property interest attached by the courts below—is "in the United States." The courts of this country have

---

[11] *See Conn. Bank*, 309 F.3d at 265 (providing no guidance on the "difficult" governing "legal question of determining the situs of the intangible royalty obligations"); *id.* at 266–67 (Dennis, J., concurring) ("the situs question is one which deserves more attention"); *Fid. Partners, Inc. v. Philippine Exp. & Foreign Loan Guar. Corp.*, 921 F. Supp. 1113, 1119 (S.D.N.Y. 1996) (applying fact-intensive inquiry into nature of banking relationship and connection of bank accounts to foreign country); *Alejandre v. Republic of Cuba*, 42 F. Supp. 2d 1317, 1334–43 (S.D. Fla.), *rev'd on other grounds*, 183 F.3d 1277 (11th Cir. 1999) (applying fact-intensive inquiry regarding substance and origin of payments).

restrained hundreds of millions of dollars of Indonesia's public funds for over a year. The foreign relations interests of the United States favor a speedy resolution of that issue.

III. THE QUESTIONS PRESENTED RAISE IMPORTANT ISSUES OF FEDERAL LAW AND IMPLICATE FEDERAL INTERESTS IN COMITY WITH FOREIGN NATIONS.

The need for this Court's review is heightened by the important and recurring nature of the questions presented. The issues presented involve the interpretation of a statute characterized by this Court as establishing "a comprehensive set of legal standards governing claims of immunity in *every* civil action against a foreign state or its political subdivisions, agencies or instrumentalities." *Verlinden*, 461 U.S. at 488 (emphasis added). As such, the issues implicate the Nation's foreign relations, a subject which has long furnished an important basis for review. *See, e.g., Christopher v. Harbury*, 536 U.S. 403, 122 S. Ct. 2179, 2185 (2002); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 407 (1964); *Forsyth v. City of Hammond*, 166 U.S. 506, 514–15 (1897); *see also Verlinden*, 461 U.S. at 493 ("Actions against foreign sovereigns in our courts raise sensitive issues concerning the foreign relations of the United States, and the primacy of federal concerns is evident.").

In enacting the FSIA, Congress specifically acknowledged that "attachments can also give rise to serious friction in United States' foreign relations." 1976 U.S.C.C.A.N. at 6626. As the Fifth Circuit has stated:

> One of the chief motifs of the FSIA is to limit as much as possible disrupting the "public acts" or "*jure imperii*" of sovereigns, while restricting their purely commercial activity. Confiscating funds that are being put immediately to some sovereign use interrupts a sovereign's public acts regardless

> of what kind of activity generated the funds, commercial or noncommercial.

Conn. Bank, 309 F.3d at 253 (citation omitted).

The foreign relations implications of the Second Circuit's decision are particularly acute in this case. The courts have attached over $285 million of LNG Revenues that otherwise flow directly to the Republic's foreign exchange reserve account at the New York Federal Reserve Bank and are critical to Indonesia's economic recovery and stability. The LNG Revenues are allocated to the national budget and "included in the calculation and predictions in the cash management plan of the Ministry of Finance." Pet. App. 54a; *id.* at 10a (noting evidence submitted by the Ministry and Pertamina "suggests that twenty percent of the Indonesian national budget derives from oil and natural gas revenues"). Moreover, the revenues are used to meet the requirements imposed by the IMF's economic recovery program, and pay foreign sovereign debt obligations. *Id.* at 10a; R-62. The Republic's failure to meet these obligations would create political instability and economic hardship that could adversely affect investor confidence in Indonesia and adversely affect Indonesia's economic recovery. Pet. App. 54a–55a.

The inconsistencies produced by the decision below, if not resolved by this Court, also will have serious practical consequences on the law relating to the amenability of a foreign state's property to attachment. Foreign states, either as defendants or as owners of property faced with attachment, garnishment, or execution, will confront different legal standards governing their assertions of immunity depending on the jurisdiction in which a plaintiff attempts to execute upon its property. Given Congress's deliberate effort to "develop[ ] a uniform body of law concerning the amenability of a foreign sovereign to suit in United States courts," these concerns are particularly acute. *Bancec*, 462 U.S. at 622 n.11

(quotation omitted); *see also* 1976 U.S.C.C.A.N. at 6631 (noting Congress's concerns about "the potential sensitivity of actions against foreign states and the importance of developing a uniform body of law in this area").

This Court has intervened regularly since 1976 to clarify the important obligations of federal courts when determining claims of sovereign immunity from suit under the FSIA. Given the different approaches to the FSIA's attachment immunity provisions advanced by various lower courts and the importance of the approach to foreign relations, this Court should now provide similar guidance to federal courts evaluating the attachment of property over which foreign states claim immunity.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted and the judgment below reversed.

Respectfully submitted,

SETH P. WAXMAN
JODY MANIER KRIS
JOSEPH R. PROFAIZER
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

CAROLYN B. LAMM
Counsel of Record
FRANK PANOPOULOS
R. SHAWN GUNNARSON
WHITE & CASE LLP
601 Thirteenth Street, N.W.
Washington, D.C. 20005
(202) 626-3600

Counsel for Petitioner

APRIL 14, 2003